



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

September 16, 2005

Washington Department of Fish and Wildlife
Capital Planning & Engineering
ATTN: Curtis Wambach
600 Capitol Way
Olympia, WA 98501

REGISTERED MAIL
RR 359 893 757 US

Snohomish County Parks Department
ATTN: Sharon Walker
9623 - 32nd Street SE, Building A
Everett, WA 98205

REGISTERED MAIL
RR 359 893 765 US

Dear Mr. Wambach and Ms. Walker:

RE: **Order # 2759**

U.S. Army Corps Reference No. 200400811
Water Quality Certification/Coastal Zone Consistency Determination for Washington
Department of Fish and Wildlife and Snohomish County Parks Department, Spencer
Island Habitat Restoration Project, Union and Steamboat Sloughs, Snohomish County,
Washington

The request for certification for proposed work in and adjacent to the Union and Steamboat Sloughs has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

Pursuant to 16 U.S.C. 1456 et. seq. (Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended), Ecology concurs with the applicant's determination that this work will be consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Rebekah Padgett at (425) 649-7129. Written comments can be sent to



Curtis Wambach, WA Dept. of Fish and Wildlife
Sharon Walker, Snohomish County Parks Department
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Rebekah at the Department of Ecology, 3190 160th Avenue SE, Bellevue, WA 98008, or at
rpad461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures
described in the Order.

Sincerely,

A handwritten signature in black ink, appearing to read 'Geoff Tallent', with a long horizontal flourish extending to the right.

Geoff Tallent
Interim Section Manager
Shorelands and Environmental Assistance Program

Enclosure

GT:rc

cc: Susan Glenn, U.S. Army Corps of Engineers

IN THE MATTER OF GRANTING A)	ORDER # 2759
WATER QUALITY)	Corps Reference No. 200400811
CERTIFICATION TO)	Re-establish approximately 250 acres of
Washington Department of Fish and)	estuarine habitat within the Snohomish River
Wildlife and)	estuary; Sections 21, 22, 15, 16, T. 29 N., R. 5 E,
Snohomish County Parks Department)	Snohomish County, Washington.
in accordance with 33 U.S.C. 1341)	
FWPCA § 401, RCW 90.48.120, RCW		
90.48.260 and Chapter 173-201A WAC		

TO: Washington Department of Fish and Wildlife
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 ATTN: Curtis Wambach
 600 Capitol Way
 Olympia, WA 98501

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 ATTN: Sharon Walker
 9623 - 32nd Street SE, Building A
 Everett, WA 98205

On April 14, 2005, the U.S. Army Corps of Engineers issued a Nationwide Permit (NWP) #3i, 3ii "Maintenance," #14 "Linear Transportation Crossings," and #27 "Stream and Wetland Restoration Activities" to Washington Department of Fish and Wildlife and Snohomish County Parks and Recreation for habitat restoration work that will re-establish approximately 250 acres of estuarine habitat within the Snohomish River estuary. During review of the project, the Department of Ecology (Ecology) determined that an individual Section 401 water quality certification would be required. Ecology issued a public notice pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401) on August 26, 2005. No comments were received.

The proposed project consists of the following:

- Modification of the cross dike by filling one culvert, construction a 40- to 50-foot opening, and bridging the resulting opening; construction of large breaches in the exterior dike at the northern end of Spencer Island;
- Construction of upland habitat ("habitat fingers") to replace that lost through dike breaching. These habitat fingers will provide game trails, waterfowl nesting surface, access for hunters and hikers, edge habitat, and wildlife viewing opportunities. The fingers will be 4 feet wide at the top with 5:1 slopes and will fill 73,500 square feet of wetlands;
- Disabling drainage ditches to encourage natural filling of the existing ditches and formation of drainage paths; and
- Possibly add a small breach at an existing culvert location in the exterior of the western dike along Union Slough (Phase II).

AUTHORITIES:

For purposes of this Order, the term "Applicant" shall mean Washington Department of Fish and Wildlife (WDFW) and Snohomish County Parks and Recreation Department (Snohomish County Parks) and its agents, assigns, and contractors.

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has investigated this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306 and 307);
2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

CONDITIONS OF ORDER # 2759 AND WATER QUALITY CERTIFICATION:

In view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.260, RCW 90.48.120, and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the following conditions:

A. No Impairment of Water Quality:

- A1. The Union and Steamboat Sloughs, WRIA #7, are classified as Class A waters of the state. Certification of this proposal does not authorize Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

Union and Steamboat Sloughs have been identified on the current 303(d) list as exceeding state water quality standards for fecal coliform and temperature. This proposed project shall not result in further exceedances of the standards.

- A2. Turbidity mixing zone: WAC 173-201A-110(3) allows a 300-foot mixing zone in rivers and tributaries with flows greater than 100 cfs to allow for temporary exceedances of the turbidity standards during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This certification does not authorize a temporary turbidity mixing zone greater than that allowed by WAC 173-201A-110(3). The Applicant shall fully apply all known, available, and reasonable methods of prevention, control, and treatment (AKART). Within the temporary turbidity mixing zone, the Class A standard for turbidity is waived. All other applicable water quality standards shall remain in effect within the temporary turbidity mixing zone and all other water quality standards are to be met outside of the authorized mixing zone.
- A3. The waiver of specified standards within the temporary turbidity mixing zone is intended for brief periods of time (such as a few hours) and is not an authorization to exceed those standards for the entire duration of construction. In no case shall turbidity exceedances cause degradation of water quality that significantly interferes with or becomes injurious to characteristic water uses, including fisheries habitat, or causes long-term harm.

B. Project Mitigation:

- B1. Impacts to aquatic resources shall be mitigated by the project itself through measures described in the following documents, except as modified by this Certification and Order, and including any project revisions approved in writing by Ecology:
- a. Spencer Island Restoration WA-88-1, by Ducks Unlimited, 9/15/04; with revisions by WDFW dated 9/22/04, and revised plans dated 6/17/05
 - b. Spencer Island Restoration Stormwater Pollution Prevention Plan & Temporary Erosion and Sediment Control Plan, by Snohomish County Parks and WDFW, dated 9/05
 - c. Letter from WDFW to Ecology dated 7/27/05
 - d. Email from Snohomish County Parks to Ecology dated 8/22/05
 - e. Email from WDFW to Ecology dated 9/9/05, including revised planting plan.
- B2. In addition to mitigation measures described in the above-referenced documents, the following requirements shall be conditions for the project:
- a. Record Report and "As-Built" Drawings: A report documenting the final design of the project areas shall be prepared when site construction and planting is completed. The report shall include the following:
 - i. Vicinity map showing site access;
 - ii. Final site topography;
 - iii. Drawings that clearly identify the boundaries of the project area;

- iv. The installed planting scheme showing densities, sizes, and locations of plants, as well as plant sources and the time of planting;
- v. Photographs of the area taken from permanent reference points;
- vi. Locations of photopoints, sampling and monitoring sites;
- vii. An analysis of any changes to the project plan that occurred during construction.

A copy of the Record Report shall be sent to Rebekah Padgett at Ecology within 60 days of completing construction, and in no case later than December 31, 2006. The project monitoring period shall commence with Ecology's acceptance of the Record Report.

- b. Performance Standards: Project performance standards are described in paragraph 7 of a letter from WDFW to Ecology dated 7/27/05. These include stability of breach openings, site flushing by tidal waters, fish access and utilization of the site, initiation of vegetation shift from freshwater wetland to estuarine wetland, and reduction in presence of non-native invasive species. Plantings on the "habitat fingers" shall meet the following standards in the first year following installation: 85% survival and less than 15% non-native invasive species.
- c. Monitoring: Monitoring to ensure that the project is successful shall be performed as described in an email from Snohomish County Parks to Ecology dated 8/22/05, and paragraph 7 of a letter from WDFW to Ecology dated 7/27/05. Monitoring shall include fish access and site utilization, shift in vegetation communities, increases in mud flat area, and presence of non-native invasive plant species. Monitoring will rely on aerial photograph interpretation with ground verification. Monitoring shall take place over a period of 10 years, with monitoring performed every other year for 10 years. In addition, monitoring of the "habitat finger" plantings the first year following installation shall include a general site assessment, % plant survival, and % non-native invasive species. Copies of all monitoring reports shall be submitted to Ecology at 3190 – 160th Avenue SE, Bellevue, WA, 98008-5452, as well as to the U.S. Army Corps of Engineers. Include Order #2759 on these report submittals.
- d. Maintenance: Maintenance of the project site is necessary to ensure that the project is successful. Maintenance measures may include irrigation, removal and replacement of dead and dying plants, and removal of non-native invasive species. Irrigation may be required from June through mid-October for the first growing season following plant installation on the "habitat fingers," to ensure a minimum of 1 inch of water per week. Irrigation will not be necessary on those weeks where rainfall at the site exceeds 1 inch per week.
- e. Adaptive Management and Contingency Measures: Applicant is responsible for the success of the estuarine restoration. The Applicant proposes to use adaptive management to evaluate the success of the project and make revisions if necessary. If

some aspect of the project is deemed not successful, then contingency measures may be necessary, such as re-grading, replanting or otherwise altering the design for project success. Contingency measures shall be approved in writing by Ecology prior to implementation.

- f. Access: Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, and necessary data collection to ensure that the restoration plans are implemented as approved.

C. Construction Stormwater Management:

- C1. Before clearing and grading in or near wetlands and streams, the areas near the construction sites to remain undisturbed shall be protected from construction impacts. Bright orange construction fencing shall be installed before site clearing to mark the edge of the clearing near the existing wetlands and stream channels and above the high tide line. All project staff shall be trained to recognize the construction fencing that identifies clearing limits. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be altered.
- C2. Erosion Control: All conditions of the Construction Stormwater NPDES Permit for this project shall be implemented.
- C3. The erosion control and storm water measures described in the Spencer Island Restoration Stormwater Pollution Prevention Plan and Temporary Erosion and Sediment Control Plan (September 2005) shall be implemented to prevent any uncontrolled discharge to state waters, as well as the following measures:
 - a. All sediment control devices including sediment ponds, perimeter silt fencing, and other sediment trapping Best Management Practices (BMPs) shall be installed before grading.
 - b. All exposed and unworked soils shall be stabilized by suitable and timely application of BMPs.
 - c. Adjacent and downstream properties shall be protected from sediment deposition from wind or water action.
 - d. All construction access routes that are subject to water or wind erosion shall be stabilized.
 - e. All temporary and permanent erosion control BMPs shall be maintained and repaired as needed to assure continued performance of their intended function.

- f. All temporary BMPs shall be removed or stabilized after final site stabilization.

C4. Construction:

- a. Turbid water generated from construction activities shall not be discharged directly to waters of the state. Temporary sediment traps can be used if necessary to allow the turbid water to settle, and shall not be discharged until the water meets the water quality standards for turbidity.
- b. Clean water may be discharged directly to waters of the state after testing has been completed to determine compliance with the water quality standards. The discharge outfall method shall be designed and operated so as to not cause erosion or scour in the Sloughs, banks or vegetation. The flow rate of discharge water into flowing water shall not exceed one-tenth of the natural flow rate of the water at the time of discharge.
- c. Excavation of the breaches in the dike shall be implemented as described in the Spencer Island Restoration Stormwater Pollution Prevention Plan & Temporary Erosion and Sediment Control Plan (September 2005), including the use of jute matting to cover exposed soil before it becomes inundated by a rising tide.
- d. Impacts to bank and shoreline vegetation shall be limited to the maximum extent possible, and disturbed areas shall be replanted per these plans.
- e. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- f. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters.

C5. Water Quality Sampling and Monitoring: **A water quality monitoring plan for in-water construction activities shall be submitted to the Department of Ecology, Federal Permit Coordinator, for review by September 16, 2005.** Ecology may require changes and modifications to the plans.

The water quality monitoring plan shall include the following minimum specifications:

- a. Name and phone number of person responsible for monitoring;
- b. Map of sample locations (minimum of background and 300 feet downstream). If exceedances are detected at 300 feet, additional sampling shall occur further downstream;

- c. Parameter(s) to be monitored; turbidity at a minimum;
 - d. Sample method; and
 - e. Sample frequency: Applicant shall conduct water quality monitoring on a daily basis before commencing in-water work to determine background; and every three hours during removal of the breached sections of dike below the high tide line, and any other work that may affect Union Slough or Steamboat Slough. Sampling may be reduced if no exceedances are detected.
- C6. Reporting: Results of water quality sampling, as determined by the water quality monitoring plan, shall be forwarded to Department of Ecology on a weekly basis to Rebekah Padgett at (425) 649-7129, e-mail rpad461@ecy.wa.gov or fax (425) 649-7098.
- C7. If water quality standards are exceeded at any time during construction, the Applicant shall:
- a. Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
 - b. Notify Ecology of the failure to comply within 24 hours to Ecology's Rebekah Padgett by telephone at (425) 649-7129, fax to (425) 649-7098, or email rpad461@ecy.wa.gov.
 - c. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000.
 - d. Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information. The report shall be submitted to: Rebekah Padgett, Department of Ecology, 3190 – 160th Ave SE, Bellevue, WA 98008, or by fax (425) 649-7098 or email rpad461@ecy.wa.gov.
- D. Emergency/Contingency Measures:**
- D1. In the event Applicant is unable to comply with any of the permit terms and conditions due to any cause, Applicant shall:
- a. Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.

- b. Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Rebekah Padgett by telephone at (425) 649-7129 or email to rp461@ecy.wa.gov.
 - c. Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
 - d. Compliance with this condition does not relieve Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.
- D2. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters. No refueling of equipment shall occur over, or within 50 feet of creeks or wetlands.
- E. Notification:**
- E1. Applicant shall provide notice to Ecology's Rebekah Padgett at least 3 days prior to the start of placing fill in wetlands or other waters of the state, and within 14 days after completion of construction. Notification can take place by e-mail to rp461@ecy.wa.gov, telephone to (425) 649-7129, fax to (425) 649-7098, or in writing.
- F. General Conditions:**
- F1. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
- F2. Applicant will be out of compliance with this certification if the project is constructed and/or operated in a manner not consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.
- F3. Applicant will be out of compliance with this certification and must reapply with an updated application if five years elapse between the date of the issuance of this certification and the beginning of construction and/or discharge for which the federal license or permit is being sought.
- F4. Applicant will be out of compliance with this certification and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location,

emergency or otherwise, that is not defined in the Public Notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.

- F5. This Order is valid for a period of not more than five years after the signature dated on the last page of this Order.
- F6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors. To avoid violations or non-compliance with this Order, Applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order, the NPDES permit, and any subsequent revision or Ecology-approved plans.
- F7. Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
- F8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
- F9. This Order does not allow any additional fill within the wetlands other than that specified in this approval. If the "habitat fingers" erode or otherwise are washed away by tidal action or flooding, a new approval will be required from Ecology for placement of any additional fill material in the wetland.
- F10. Liability: Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

Appeal Process:

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to Chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology, within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608.

In addition, please send a copy of your appeal to:

Loree' Randall
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated September 16, 2005 at Bellevue, Washington.



Geoff Tallent, Interim Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington